

U. S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
ENTERED
BANKRUPTCY COURT
TEXAS
DEC 6 2002
TAWANA C. MARSHALL, CLERK
By _____
Deputy

**Jointly Administered Under
Case No. 00-30748 RCM-11**

On November 26, 2002, came on to be heard Defendants' Motion for Summary Judgment. This Court has core jurisdiction over this matter under 28 U.S.C. §§ 1334 and 157(b)(2)(H). The following are the Court's conclusions of law under Bankruptcy Rule 7052.

1. It is undisputed that EyeCorp is the wholly owned subsidiary of PRG. Further, the parties do not dispute that PRG was not the owner or title holder to the assets alleged to have been fraudulently transferred in Plaintiffs' Counts 1 through 7. Section 548(a) states in relevant part that "[t]he trustee may avoid any transfer of an interest of the debtor in property." 11 U.S.C. § 548(a)(1); *see generally Miner v. Bay Bank & Trust Co. (In re Miner)*, 185 B.R. 362, 365 (N.D. Fla. 1995) ("[a]n essential element in a fraudulent transfer action is that the debtor have had an interest in the property transferred. A fraudulent transfer may not be avoided under § 548(a) if the debtor had no interest in the property transferred"). In a Chapter 11 case, the debtor in possession steps into the shoes of the trustee for purposes of, among other things, pursuing fraudulent transfer actions. It is undisputed that EyeCorp had an interest in the allegedly fraudulently transferred assets.
2. PRG argues that because it owns all the equity of EyeCorp and the Liquidating Plan provides that any funds remaining in EyeCorp after distribution to its unsecured creditors vests in the equity holders, PRG has an interest in the fraudulent transfer and therefore is entitled to be a party to Debtor EyeCorp's claim. "It is an elementary principle of corporate law that a corporation and its stockholders are separate entities and that the title to corporate property is vested in the corporation and not in the owners of the corporate stock." *Sun Towers, Inc. v. Heckler*, 725 F.2d 315, 331 (5th Cir. 1984).
3. Further, PRG and EyeCorp admit that they are not "seeking substantive consolidation of the

estates of PRG and EyeCorp nor invoking the single business enterprise theory.” (Pls.’ Br. in Opp. to Defs.’ Mot. for Summ. J. at p. 30.) Thus, PRG and EyeCorp seek to proceed in bankruptcy as distinct business entities, except with relation to reconstructing the historical financial condition of PRG and/or EyeCorp. *Id.* In fact, PRG does not claim, or argue, that it has a legally cognizable or equitable interest in the property allegedly fraudulently transferred. Instead, it argues that its equity position in EyeCorp allows it to prosecute EyeCorp’s fraudulent transfer claim alongside EyeCorp. Such claim does not equal an “interest” for purposes of pursuing a fraudulent transfer claim. Although PRG, as a distinct corporate entity, has something at stake in EyeCorp’s fraudulent transfer claim, its stake survives or falls based on EyeCorp’s success or failure in this litigation. PRG has, at best, a claim under the Liquidating Plan for the proceeds of the litigation. PRG is not the debtor-in-possession of EyeCorp’s estate. Thus, PRG does not have, as a matter of law, standing to prosecute EyeCorp’s § 548 claims.

4. The same holds true for Plaintiffs’ § 544 actions. Section 544(b) states in relevant part that “the trustee may avoid any transfer of an interest in of the debtor in property . . . that is voidable under applicable law.” 11 U.S.C. 544(b)(1). Here, EyeCorp, as debtor in possession, steps into the shoes of the trustee with respect to its interests in its own property. PRG has no interest other than the interest contemplated by the plan of reorganization.
5. Defendants’ motion for summary judgment is granted with respect to PRG’s lack of standing to bring Counts 1 through 7. This ruling expressly does not affect EyeCorp’s standing to pursue Counts 1 through 7 nor does it affect, either positively or negatively, EyeCorp’s ability to establish its financial condition, for purposes of its fraudulent transfer claims, on

a consolidated basis with PRG.

6. With respect to the claims of Plaintiffs, PRG II and PRG IV, the undisputed summary judgment evidence is that PRG II and PRG IV (the “PRG Subs”) are non-debtor subsidiaries of Debtor PRG. It is further undisputed that the claims between the PRG Subs, on one hand, and VRF and RME, on the other hand, strictly involve nondebtor parties and state law causes of action. Under the jurisdictional provisions, specifically 28 U.S.C. § 1334, subject matter jurisdiction is conferred to the bankruptcy court over “all civil proceedings arising under title 11, or arising in or related to cases under title 11.” Plaintiffs argue that this Court has “related to” jurisdiction over the PRG Subs’ claims against VRF and RME.
7. A proceeding is related to a bankruptcy case if “the outcome of that proceeding could *conceivably* have any effect on the estate being administered in bankruptcy.” *Wood v. Wood (In re Wood)*, 825 F.2d 90, 93 (5th Cir. 1987) (quoting *Pacor, Inc. v. Higgins*, 743 F.2d 984, 994 (3d Cir. 1984)); *U.S. Brass Corp. v. Travelers Ins. Group, Inc. (In re U.S. Brass)*, 301 F.3d 296, 304 (5th Cir. 2002). The outcome of a proceeding could have a conceivable effect on the bankruptcy estate if “the outcome could alter the debtor’s rights, liabilities, options, or freedom of action (either positively or negatively) and which in any way impacts upon the handling and administration of the bankrupt estate.” *FDIC v. Majestic Energy Corp. (In re Majestic Energy Corp.)*, 835 F.2d 87, 90 (5th Cir. 1988) (quoting *Pacor, Inc. v. Higgins*, 743 F.2d 984, 994 (3d Cir. 1984)); *Walker v. Cadle Co. (In re Walker)*, 51 F.3d 562, 569 (5th Cir. 1995).
8. The basis for related to jurisdiction, Plaintiffs argue, is that the PRG Subs are wholly owned subsidiaries of Debtor PRG and the plan contemplates that PRG’s subsidiaries will be

liquidated for the benefit of PRG's creditors. Thus, Plaintiffs argue, the outcome of the PRG Subs' claims could have a conceivable effect on PRG's bankruptcy estate.

9. Another bankruptcy court recently faced a very similar issue. In finding that the mere fact that a party to the cause of action was a wholly owned subsidiary of a debtor in bankruptcy did not confer subject matter jurisdiction on the bankruptcy court, the court stated that plaintiff's "action may have an effect on the ultimate value with [sic] the estate receives for the stock it owns, but it does not alter the estate's rights, liabilities, options or freedom of action. If the court were to find that this action was under the jurisdiction of the Bankruptcy court, the decision would have the result of bringing every wholly owned subsidiary into every Bankruptcy case regardless of the circumstance and without the safeguards afforded by schedules, statements of financial affairs, notices to creditors, or meetings of creditors. Further, such a decision could result in debtors and other abusing the system by withholding from Bankruptcy or bringing into Bankruptcy subsidiaries in a revolving door fashion." *In re Winstar*, 284 B.R. 40, 51 (Bankr. D. Del. 2002).
10. Similarly, in *Fitzgerald's Sugar Creek, Inc. v. Kansas City Station Corp. (In re Fitzgerald's)*, 261 B.R. 1 (Bankr. W.D. Mo. 2001), the court held that the mere fact that plaintiff's parent corporation filed bankruptcy "does not ratchet this state law proceeding into a bankruptcy proceeding." The subsidiary's dispute with a third-party was "a mere precursor to a future claim" by the bankrupt parent against the subsidiary. *Id.* at 7; *see also Blackwell v. Rio Mgmt., Inc. (In re Blackwell)*, 267 B.R. 732, 739 n.9 (Bankr. W.D. Tex. 2001). The court held that upon the fruition of a claim between the parent and the subsidiary, bankruptcy jurisdiction could be invoked. *Id.* Absent a judgment in the subsidiary's favor, the


subsidiary's litigation did not affect the bankruptcy estate. *Id.*

11. Under these standards, the PRG Subs' claims do not have a conceivable effect upon the bankruptcy estate of PRG or EyeCorp. Although the plan contemplates the liquidation of PRG's subsidiaries, the outcome of the litigation involving the PRG Subs leaves, at best, a claim on behalf of PRG against the PRG Subs.
12. The jurisdiction of this court over the PRG Subs claims may actually be subject to a different standard than the *Wood* analysis. See *Bank of La. v. Craig's Stores of Texas, Inc. (In re Craig's Stores of Texas, Inc.)*, 266 F.3d 388 (5th Cir. 2001); *U.S. Brass Corp. v. Travelers Ins. Group, Inc. (In re U.S. Brass Corp.)*, 301 F.3d 296 (5th Cir. 2002)¹.
13. This point is further highlighted by the fact that the PRG Subs are being liquidated outside the PRG/EyeCorp bankruptcy proceeding. The PRG Subs are the owners of the alleged claims against VRF and RME. The proceeds of those claims, if any, must be used to first pay the PRG Subs' creditors. Then any remaining proceeds may be paid up to Debtor PRG, the parent corporation. The summary judgment evidence is silent as to the PRG Subs' liquidity. The bottom line is that PRG may not net anything after all the PRG Subs' debts are paid.
14. Plaintiffs also argue that the disclosure statement and plan confer upon the Court subject matter jurisdiction. The sole source of a bankruptcy court's jurisdiction is 28 U.S.C. §§ 1334 and 157. *U.S. Brass*, 301 F.3d at 303. "Jurisdiction cannot be conferred by consent." *In re Winstar*, 284 B.R. at 50.

¹ The PRG Subs' claims do not meet either the *Craig's Stores* or the *U.S. Brass* standard.

15. Defendants are entitled to summary judgment on PRG II and PRG IV's claims for the foregoing reasons as a matter of law.² Defendants summary judgment motion is granted on this ground.
16. Finally, Defendants are entitled to summary judgment on Counts 1, 2, 6 and 7 to the extent any of the alleged fraudulent transfers occurred more than one year prior to the date of the bankruptcy petition and such counts are based solely on the Bankruptcy Code avoidance provisions.
17. In all other respects, except as set forth herein, the Defendants' Motion for Summary Judgment is denied.

Signed: 12/6/02



Harlin D. Hale
United States Bankruptcy Judge

² Because of this analysis, the Court may, and would be inclined to, also abstain from hearing the PRG Subs' claims pursuant to 28 U.S.C. 1334(c)(1) even if related to jurisdiction did exist.